



General principles (Art. 68 (1) and (2) UPCA)

- The infringer shall have engaged the infringing activity knowingly
- Damages correspond to the harm actually suffered
- The patentee is placed back in the position he would have been in absence of infringement
- The infringer shall not benefit from the infringement
- Damages shall not be punitive

Scope of the damages (R. 125)

- In addition to infringement, damages include compensation in case of:
- revocation of an order to preserve evidence (R. 198-2)
 - revocation of provisional measures (R. 213-2)
 - enforcement of a decision or an order subsequently revoked or varied (R. 354-2)

General principles (Art. 68 (1) and (2) UPCA)

- 1st method:
- negative economic consequences, including lost profits suffered by the patentee
 - unfair profits made by the infringer
 - moral prejudice
- 2nd method:
- lump sum at least equal to the amount of a licence fee
- Remark:**
- If the infringer did not act knowingly:
- recovery of profits, or
 - payment of compensation

Procedure

- Order of payment with the decision on the merits (R. 118-1)
- Alternatively: separate proceedings (R. 125)
- Possibility of an interim award of damages in the decision on the merits (R. 119) or in the decision on the damages (R. 150-2)

Determination of damages in separate proceedings

